



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

REHEARING DECISION

FOO/151277

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 12, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 05, 2013, at Milwaukee, Wisconsin. On October 9, 2013, a decision was issued by DHA. On October 17, 2013, DHA received a rehearing request from the agency. On October 31, 2013, the rehearing request was granted.

The issues for determination are:

1. Whether the agency properly reduced the Petitioner's FS benefits from \$163/month to \$16/month effective August 1, 2013.
2. Whether the agency properly determined the Petitioner's FS benefits as \$145/month effective September 1, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Belinda Bridges

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 19, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her monthly FS benefits would be reduced from \$163 to \$16 effective August 1, 2013. The agency budgeted the unearned income of the Petitioner and the earned income of the Petitioner's daughter.
3. The Petitioner's son lives with her but buys and prepares his own food. He is 20 years old.
4. Petitioner has Supplemental Security Income (SSI) of \$112.78/month. Petitioner also receives Social Security income of \$701/month.
5. Petitioner's daughter resided at home during the summer and was employed at [REDACTED]. She resides at college during the school year.
6. On August 14, 2013, the agency re-calculated the Petitioner's FS benefits and determined she is eligible for \$145/month effective September 1, 2013. The agency budgeted the unearned income of the Petitioner and the earned income of the Petitioner's son in making this determination.
7. On August 12, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

Eligibility for FoodShare depends upon a household's size and income. A FoodShare household consists of one or more persons who live in the same household and purchase and prepare food together for home consumption. 7 CFR § 273.1(a)(3); FoodShare Wisconsin Handbook (FSH) § 3.3.1. Household income means all income from any source unless 7 CFR § 273.9(c) excludes it. 7 CFR § 273.9(b). Net income is determined after subtracting those deductions found in 7 CFR § 273.9(d) from gross income.

All earned income from FS group members must be counted in determining eligibility and FS benefits. FSH § 4.3.2. The agency budgeted the Petitioner's daughter's earned income in its determination for August 1, 2013. The Petitioner conceded that her daughter was living with her at the time. The Petitioner did not dispute her daughter's income but rather disputed that her daughter's income should be considered in determining FS benefits. The Petitioner's daughter was living with her at the time and was part of the FS group. Therefore, the regulations are clear that her income must be considered. When the Petitioner reported that her daughter would be moving out to attend college, the agency removed her from the household and her income was not considered in determining benefits for September 1, 2013.

I reviewed the agency budget screen for August, 2013 and determined that the agency properly calculated the Petitioner's unearned income and her daughter's earned income for August 1, 2013. The agency properly applied a standard deduction, earned income deduction and shelter deduction. I conclude the agency properly determined the Petitioner was eligible for \$16 in FS benefits for the month of August, 2013.

With regard to the issue of the Petitioner's benefits effective September 1, 2013, the original DHA decision remanded the case to the agency to remove the Petitioner's son from the FS group based on the Petitioner's testimony that her son does not purchase and prepare food with her. The agency requested a rehearing on this determination based on an error of law. Specifically, the agency's request for rehearing notes the following FS regulation:

b) Special household requirements – (1) Required household combinations. The *following individuals who live with others must be considered as customarily*

***purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household,*** unless otherwise specified.

...

(ii) A person under **22 years of age** who is living with his or her natural or adoptive parent(s) or step-parent(s);

...

7 CFR 273.1(b)(1)(ii). (emphasis added).

I conclude that the determination of the previous hearing decision requiring the agency to remove the Petitioner's son from the FS group was an error of law. The Petitioner's son is 20 years old, living with his mother and therefore must be included in the FS group even if he does not purchase and prepare food with his mother.

I reviewed the agency's budget screen regarding its determination that Petitioner's monthly benefits effective September 1, 2013 are \$145. Based on the evidence received, I conclude that the agency properly determined the Petitioner's benefits.

### **CONCLUSIONS OF LAW**

The agency properly included the Petitioner's daughter in the FS group and properly calculated the Petitioner's FS benefits for August, 2013.

The agency properly included the Petitioner's son in the FS group and properly calculated the Petitioner's FS benefits effective September 1, 2013.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of November, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 26, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability